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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FRESH FRANCHISE LLC,
Plaintiff,

-against-

FRESH BEGINNINGS YONKERS, LLC, JAMES
OLIVER, and JAMES COUGHLIN,

Defendants.

No. 23-cv-423 (NSR)

ORDER

NELSON S. ROMÁN, United States District Judge:

Plaintiff Fresh Franchise LLC commenced this trademark infringement action arising under 15 U.S.C. § 1051 against Defendants Fresh Beginnings Yonkers, LLC, James Oliver, and James Coughlin through a Complaint filed on January 18, 2023. (ECF No. 1.) In addition to their Complaint, Plaintiff filed an emergency application for a temporary restraining order (“TRO”) and preliminary injunction. (ECF No. 7.)

Upon Plaintiff’s prima facie showing of irreparable harm and a likelihood of success on the merits, this Court issued an order on January 18, 2023 directing Defendants to appear on January 25, 2023 at 2:00 p.m. before Judge Nelson S. Román to show cause why this Court should not issue an order pursuant to Rule 65 of the Federal Rules of Civil Procedure “preliminarily (a) enjoining Defendants from (i) continuing to operate a Fresh & Co restaurant at 2360 Central Park Avenue, Yonkers, New York (the ‘Yonkers Franchise’) and (ii) using Fresh & Co’s Proprietary Marks, System (as those terms are defined in the Franchise Agreement between Fresh & Co and Fresh Beginnings, dated October 15, 2020 (the ‘Franchise Agreement’)) and registered trademarks; and (b) enforcing Defendants’ non-compete obligations pursuant to Articles 14 and 16 of the Franchise Agreement.” (ECF No. 15.) The Court’s January 18, 2023 Order “temporarily

restrained [Defendants] from operating the Yonkers Franchise or any other Competing Business (as defined in the Franchise Agreement) and from using Fresh & Co's Proprietary Marks, System or registered trademarks." (*Id.*) The Court also authorized Plaintiff to serve the Court's January 18, 2023 Order, together with the papers upon which it is based, and Plaintiff's Complaint upon Defendants by email. (*Id.*)

Plaintiff filed an Affidavit of Service that same day, demonstrating service of the above-referenced papers upon Defendants by email. (ECF No. 16.) To date, Defendants have not entered an appearance or otherwise responded to the Court's January 18, 2023 Order. Accordingly, it is hereby

ORDERED that Plaintiff serve this Order, the Court's January 18, 2023 Order (together with the papers upon which it is based), and Plaintiff's Complaint upon Defendants by overnight mail, postmarked no later than 6:00 p.m. today.

As stated in this Court's January 18, 2023 Order, Defendants are directed to appear and show cause before this Court on January 25, 2023 at 2:00 p.m. why an order should not be issued pursuant to Rule 65 of the Federal Rules of Civil Procedure.

SO ORDERED.

Dated: January 24, 2023
White Plains, New York



NELSON S. ROMÁN
United States District Judge